

## **BIGFORK LAND USE ADVISORY COMMITTEE**

**Approved Minutes Thursday, August 26, 2021**

**Bethany Lutheran Church – Downstairs**

Chairwoman Susan Johnson called the meeting to order at 4:05 p.m.

Present: Committee members: Susan Johnson, Shelley Gonzales, Jerry Sorensen, Lou McGuire, Richard Michaud and Chany Ockert. Absent: Tricia Pollett. Public: One person. Flathead County Planning and Zoning: Donna Valade.

The agenda was adopted (m/s, J. Sorensen/L. McGuire) unanimous

Approval of draft minutes dated May 27, 2021 (m/s, L. McGuire/C. Ockert) unanimous.

### **Administrator's Report and Announcements:**

Sign-in sheet with e-mail address. Draft minutes and documents are posted on the County website: [flathead.mt.gov/planning\\_zoning](http://flathead.mt.gov/planning_zoning), Click on: [meeting information](#).

### **Public Comment:**

None

### **Applications:**

**FZV-21-06** A request from David Pracht and Nancy Breymeier for a variance to Section 3.16.040(3)(A) of the Flathead County Zoning Regulations (FCZR), to encroach in the front setback for the single-family dwelling. The subject property is zoned RC-1 (*Residential Cluster*) and is located at 179 Aerie Place, Bigfork, MT within the Bigfork Zoning District. The property contains approximately 0.451 acres and can legally be described as Lot 66 of the Amended Plat of the Amended Subdivision Plat of Eagle Bend, in Section 26, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

### **Staff Report:**

Donna Valade presented the application. Applicant is requesting a 9-foot encroachment into the required 20-foot front setback for the build of a residence.

Q. Sorensen: Is Aerie Place a private road? A. Valade: Yes.

Q. Sorensen: The right of way is 60 feet, where is the road in relationship to the right of way? A. Valade: My map does not show exactly where it is located. (Applicant shared a map with the information.)

Q. McGuire: Has construction begun? A. Valade: No.

### **Applicant Report:**

David Pracht and Nancy Breymeier presented. The road, Aerie Place, is 25 feet wide. The property is all bedrock. Bigfork Water and Sewer (BWS) access is on the property. We want the setback calculation from the road instead of the property line to accommodate the size and positioning of our house.

Q. McGuire: Who owns the easement between the road and the property line? A. David Naha representing Eagle Bend Homeowner's Association (HOA): Eagle Bend (EB) owns the easement.

Q. Sorensen: Does anyone know when the Eagle Bend plat was last amended? A. Valade: No.

Q. Ockert: Did you submit a plan to the HOA for a smaller home? A. Applicant: We talked with the HOA about using the easement/road as part of the setback and they did not have a problem with that, then

we learned that is not possible. We considered trying to scale back the size of the house or move it but that is not possible. The house is 18% of lot coverage.

Q. Ockert: Would the encroachment into the setback have a negative impact for snow removal on the road? A. Applicant: No, snow could be stored on the two adjacent vacant lots. Sorensen stated that there is room to store snow on the road.

Q. Ockert: Asked to Naha of EB, is there a minimum house size for lots in EB. A. Naha: Yes, 1800 square feet.

Q. Michaud: You talked to the HOA and the county about your building plans? A. Applicant: Not to the county, we thought the EB Architectural Committee had the authority to approve our plans.

Q. Sorensen: Have you considered reducing the size of the home? A. Applicant: Yes, but it would impact the size of the garage and a bedroom.

Q. Johnson: The application states that you cannot disturb an area of the property (BWS easement), can you excavate/blast another area to accommodate the home? A. Applicant: We do not want to blast the rock and only do minimal excavation.

Q. Ockert: The plan shows there will be guest parking in the easement? A. Applicant: Yes, the HOA has a requirement for guest parking.

Q. Johnson: The house is 3,500 square feet, have you changed it to a smaller size? A. Applicant: No, it is the same size including the decks and garage.

Q. Johnson: To comply with the setback, how much would you need to reduce the size of the house? A. Applicant: I have not calculated that.

Q. Ockert to Valade: Do you know how much the house needs to be reduced to comply? A. Valade: Nine feet.

Q. McGuire: Does Eagle Bend own the land from the road to the property line? Is it designated green space of EB? A. Naha (representing EB), it is not green space. Public parking in the easement could happen. EB does not know if that would be allowed.

Q. Ockert: Is there an economic hardship (Finding of Fact #5)? I do not understand why the size of the house could not be reduced. A. Applicant: We do not want to reduce the size of the house and we do not want to blast rock to make the house fit. A 9-foot reduction to the garage will not work.

Q. Sorensen: It seems the other homes may have violated the setback requirement. A. Valade: No complaints have been filed on those properties.

Q. Michaud: Could you build a smaller home? A. Applicant: We do not want to blast rock and only want to do minimal excavation. Yes, we can build a smaller home, but we want to take advantage of the view.

#### **Public Agency Comments:**

Julie Spencer: Bigfork Water and Sewer may want to review the easements to be certain they are correct. The water main appears to be outside of the BWS easement.

#### **Public Comment:**

David Naha, EB HOA representative. The Board has been working with the applicant. The Architectural Committee is okay with the encroachment, but it has not been approved by the Board. The Board does not want to set a precedence for variances to zoning. The HOA was not notified of this request.

Comment by Ockert: Lot #65 does have a similar issue with property line and easement.

**Staff Reply:**

None

**Applicant Reply:**

Lot #65 is buildable on the top of the property. I know we need a quality excavator to protect BWS easement and the adjacent property.

**Board Discussion:**

Sorensen stated that the setback violation is minor, and the encroachment is minimal. Other homes on the road appear to violate the setback requirement. Strict compliance does not seem reasonable for this application. There seems to be a disconnect between the covenants and zoning.

McGuire stated that we need to follow the staff recommendation because there are legal requirements that must be met for granting a variance, and they are not met here. If we create a precedent of ignoring the legal requirements, lawsuits could result.

Gonzales stated to David Naha that the EB HOA should not be giving any zoning advice to property owners, they should be directed to the Planning and Zoning Department. Ockert agreed.

**Findings of Facts:**

McGuire moved to adopt the Findings of Facts, seconded by Ockert. There was no additional committee discussion. The Findings of Fact were approved five to one, with Sorensen opposed.

**Committee Motion and Vote:**

McGuire moved to forward a recommendation to deny FZV-21-06, seconded by Gonzales. There was no additional committee discussion. The motion passed five to one with Michaud, McGuire, Gonzales, Johnson and Ockert in favor, Sorensen opposed.

**Old Business:**

Comments were made on the bridge replacement and traffic in Bigfork Village and on highways 35, 83 and 82.

**New Business:**

None

**Adjourn:**

Johnson moved to adjourn, second Ockert, unanimous, 5:09 p.m.

Respectfully submitted,

Shelley Gonzales, member